

97-21
Olympic Peninsula Consultants

P. O. Box 2239

Forks, WA 98331

360-374-3310

Fax 360-374-3310

E-Mail jbennett@olynet.com

RECEIVED

MAR - 4 2003

Federal Communications Commission
Office of the Secretary

Fax Cover Sheet

Sent To: FCC Office of Secretary

From Jim Bennett

Fax#: 202-418-0187

Date: March 3, 2003

Total number of pages including the cover sheet: 9

You may contact me at the above phone number after April 21, 2003 or prior to that time at 360-288-2260 during the day or 360-288-0548 in the evening. The e-mail address stays the same.

No. of Copies rec'd 0
List ABOVE

Olympic Peninsula Consultants

Jim Bennett, President
P. O. Box 2239
Forks, W A 98331

jbennett@olynet.com

UBI# 601 824 014

360-374-3310

EIN#91-1922126

RECEIVED

MAR - 4 2003

Federal Communications Commission
Office of the Secretary

March 3, 2003

Federal Communication Commission
Office of the Secretary
445 - 12th Street, SW
Washington, DC 20554

RE: APPEAL LETTER CC Docket Nos. 96-45 and 97-21

Contact Information:

Jim Bennett
PO Box 2239
Forks, WA 98331
Phone: 360-374-3310
Fax: 360-374-3310
E-mail: jbennett@olynet.com

SLD action being appealed:

Document Title: Administrator's Decision on Appeal - Funding ~~Year~~ 2002-2003,
dated February 6, 2003.
From 471 Application Number: 291855
Billed ~~Entity~~ Number: 145262

Funding Request Number: 833009

Explanation of Appeal: Decision on Appeal: Approved, **but Denied for Funding.**

~~Section~~ of the decision letter from the SLD ~~that~~ is being appealed: "Upon review of the appeal, it was determined that you are listed as the contact person for the provider of services (Capacity Provisioning Inc, - SPIN 143025189) and you are also listed as the contact person on ~~the~~ referenced Form 470 used to comply with the required 28-day bidding process for ~~the~~ services requested. Program rules dictate that if a ~~representative~~ or employee of a Service Provider serves as the contact ~~person~~ on a Form 470 such action ~~will~~ have the effect of compromising the competitive bidding process and as a result ~~denial~~ of funding. In ~~this~~ case you ~~are~~ the service provider and you ~~are listed~~ as the contact person ~~on the~~ referenced Form 470. Consequently ~~your~~ appeal is denied."

Basis for the appeal: I have never been an employee of Capacity Provisioning Inc. and when I received the letter ~~from~~ the SLD, I was **surprised to find** out that I was listed as their contact **person**. Once the bidding **process** was complete and Capacity Provisioning Inc. **won** the bid, it was **determined** that they didn't have a SPIN number. Since I was the contact person for the ~~Port~~ Angeles School District, I contacted Capacity Provisioning and told them how to apply for a **SPIN number**. In **filling out their** application **they** misunderstood and put the school district contact person down for their contact **person**.

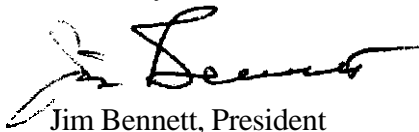
I have attached **the** following in support of this appeal:

1. The SLD decision letter
2. A letter from Capacity Provisioning, **signed** by Vice President, **Craig E. Johnson**, indicating ~~that~~ they have never employed me.
3. I have **also** enclosed a copy of their Form **498** requesting **a** change in their contact person.

Based on **this** information I request that you **APPROVE FOR FUNDING**.

Thank you for your consideration. If **you** need any additional information, please **feel free** to contact me.

Sincerely,



Jim Bennett, President



Universal Service Administrative Company
Schools & Libraries Division

Administrator's Decision on Appeal - Funding Year 2002-2003

February 6, 2003

Jim ~~Barnett~~

Re: ~~Port~~ Angeles School Dist 121

PO Box 2239

Forks, WA 98331

Re: Billed Entity Number **145262**
471 Application Number: 291855
Funding Request **Number(s)**: 833009
Your Correspondence Dated: July 1, 2002

After thorough review and investigation of all relevant facts, the Schools and Libraries Division ("SLD") of the Universal Service Administrative Company ("USAC") **has** made its decision in **regard to your** appeal of SLD's Year Five Funding Commitment Decision for the Application Number indicated above. **This letter** explains the basis of SLD's decision. **The** date of this letter begins **the 60-day time** period for appealing **this** decision to the Federal Communications Commission ("FCC"). If your letter of appeal included more than one Application Number, please note that for each application for which **an** appeal is submitted, a separate letter is sent.

Funding; Request Number: 833009
Decision on Appeal: **Approved, but Denied for Funding**
Explanation:

- You have stated on appeal **that you** received a Funding Commitment Decision Letter dated July 16, 2002 stating that this request for discounts **was denied because "The** FRN is a request for Telecommunications service from a provider that does not provide Telecommunications on a common carriage basis". You claim that you **classified the** funding request in the wrong service category. You further **stated that the** category of service should have been identified as Internet access. You would like **the** category of service changed to Internet access and **have discounts** be provided for **this** funding request.
- **Your** appeal has brought persuasive information that **the** service category for this funding request should be changed to Internet access. Unfortunately, the **SLD will be unable to provide discounts for your request** for the reasons cited below.

- Upon review of the appeal, it was determined that you are listed as the contact person for the provider of services (Capacity Provisioning Inc. - SPIN # 143025189) and you are also listed as the contact person on the referenced Form 470 used to comply with the required 28-day bidding process for the services requested. Program rules dictate that if a representative or employee of a Service Provider serves as the contact person on a Form 470 such action will have the effect of compromising the competitive bidding process and as a result denial of funding. In this case you are the service

Considerably, you are appealing as the contact person on the referenced Form 470.

- FCC rules require applicants to seek competitive bids and in selecting a service provider to carefully consider all bids.' FCC rules further require applicants to comply with all applicable state and local competitive bidding requirements? In the May 23, 2000 *MasterMind Internet Services, Inc. (MasterMind)* appeals decision, the FCC upheld SLD's decision to deny funding where a MasterMind employee was listed as the contact person on the FCC Form 470 and MasterMind participated in the competitive bidding process initiated by the FCC Form 470.' The FCC reasoned that under those circumstances, the Forms 470 were defective and violated the Commission's competitive bidding requirements, and that in the absence of valid Forms 470, the funding requests were properly denied! Pursuant to FCC guidance, this principle applies to any service provider contact information on an FCC Form 470 including address, telephone and fax numbers, and email address.
- Conflict of interest principles that apply in competitive bidding situations include preventing the existence of conflicting roles that could bias a contractor's judgment, and preventing unfair competitive advantage.' A competitive bidding violation and conflict of interest exists when an applicant's consultant, who is involved in determining the services sought by the applicant and who is involved in the selection of the applicant's service providers, is associated with a service provider that was selected.

If you believe there is a basis for further examination of your application, you may file an appeal with the Federal Communications Commission (FCC) via United States Postal Service FCC. Office of the Secretary, 445-12th Street SW, Washington, DC 20554. If you are submitting your appeal to the FCC by other than United States Postal Service, check the SLD web site for more information. Please reference CC Docket Nos. 96-45 and 97-21 on the first page of your appeal. **The FCC most RECEIVE your appeal WITHIN 60 DAYS OF THE ABOVE DATE ON THIS LETTER for your appeal to be filed in a timely fashion.** Further information and new options for filing an appeal directly with the FCC

¹ See 47 C.F.R. §§ 54.504(a), 54.511(a).

² See 47 C.F.R. § 54.504(a), (b)(2)(vi).

³ See *In re MasterMind Internet Services, Inc.*, CC Docket 96-45, ¶ 9 (May 23, 2000).

⁴ See *id.*

⁵ See, e.g., 48 C.F.R. § 9.505(a), (b).

can be found in the "Appeals Procedure" posted in the Reference Area of the SLD web site, www.sl.universalservice.org.

We *thank* you for your continued support, patience, and cooperation during the appeal process.

Schools and Libraries Division
Universal Service Administrative Company

CC: Jim Jones
Port Angeles School Dist 121
216 E 4th St
Port Angeles, WA 98362 - 3200



Capacity Provisioning Incorporated

116½ West 8th Street - (360)460-9159

A Fiber Optic Company

Delivering Communications Services at the Speed of Light

03-01-03

TO WHOM IT MAY CONCERN:

This letter is to certify to any and all parties that Mr. Jim Bennett has never been employed, associated, contracted ~~with~~ or performed any work for or with Capacity Provisioning Incorporated.

Thank you,

Craig E. Johnson
Vice President
Capacity Provisioning Inc

RECEIVED

MAR - 4 2003

Federal Communications Commission
Office of the Secretary

RECEIVED

MAR 04 2003 12:47AM HP LASERJET 3200

MAR - 4 2003

P. 8

FCC Form 498

Universal Service Administrative Company

Approved by OMB
090-0034
Avg. Burden Est.
Per Response: 1 hour

Service Provider Information Form (Please Read Instructions Before Completing Form)

| | | |
|---|---|--|
| Block 1: General Information | | |
| 1. Full Legal Name of Service Provider Capacity Provisioning Inc | | 2. TRS Company Code (if applicable) NA |
| 3. USAC Service Provider Number (Assigned by USAC) SPIN 143625189 | | (See Instructions) PRIV |
| 5. Service Provider's Street Address, P.O. Box, or Route Number 116 1/2 West 8th Street | | |
| City Port Angeles | State WA | Zip Code 98362 |
| 6. Federal Employer Identification Number FEIN 91-2117843 | 7. Indicate (Q) Business Structure <input type="checkbox"/> Corporation <input checked="" type="checkbox"/> Partnership <input type="checkbox"/> Other | |
| 8. Name of Service Provider's Contact Craig E. Johnson | 9. Telephone Number 360-460-9159 | 10. FAX Number 360-565-8400 |
| 11. Address of Service Provider's Contact - Street Address, P.O. Box, or Route Number 116 1/2 West 8th Street | | 11a. E-mail Address craig@cpfiber.com |
| City Port Angeles | State WA | Zip Code 98362 |

Block 2: Schools & Libraries and Rural Health Care Programs Information

Service Provider's Schools & Libraries and Rural Health Care Programs Contacts

| | | | |
|---|--------------------|---|---------------------------------------|
| 12. Name of Service Provider's Schools & Libraries Program Contact Craig E. Johnson | | 13. Telephone Number 360-460-9159 | 14. FAX Number 360-565-8400 |
| 15. Address of Service Provider's Schools & Libraries Program Contact - Street Address, P.O. Box, or Route Number 116 1/2 West 8th Street | | | |
| City Port Angeles | State WA | Zip Code 98362 | |
| 16. Name of Service Provider's Rural Health Care Programs Contact Craig E. Johnson | | 17. Telephone Number 360-460-9159 | 18. FAX Number 360-565-8400 |
| 19. Address of Service Provider's Rural Health Care Program Contact - Street Address, P.O. Box, or Route Number 116 1/2 West 8th Street | | | |
| City Port Angeles | State WA | Zip Code 98362 | |

Schools & Libraries and Rural Health Care Payment Information

In accordance with FCC rules Part 54.315 and 54.511, USAC will offset service provider Schools & Libraries invoices against the provider's universal service support obligation at their request, and shall offset service provider Rural Health Care invoices against the provider's universal service obligation.

Is the service provider requesting to have their Schools & Libraries invoices offset against the providers universal service obligation? ☐ Yes ☒ No

(SEE SPECIFIC INSTRUCTIONS FOR ITEMS 20 THROUGH 33)

| | | |
|--|----------------------|---------------------|
| 20. Name of Remittance Company | | |
| 21. Address of Remittance Company - Address, P.O. Box, or Route Number | | |
| City | State | Zip Code |
| 22. Name of Remittance Contact | 23. Telephone Number | 24. FAX Number |
| 25. Name of Remittance Bank (Required only if electing ACH or locked box transfer of funds) | | |
| 26. Remittance Auto Clearing House (ACH) Number and bank account (Required only if electing ACH transfer of funds) | | |
| ACH bank transit number | | Bank account number |

FCC Form 498

Universal Service Administrative Company

Page 2

| | | |
|---|----------------------|----------------|
| | | |
| Contributor | | |
| Box, or | | |
| City | State | Zip |
| 31. Name of Contributor Company Contact | 32. Telephone Number | 33. FAX Number |
| | | |
| | | |

letterhead

- For hand-delivered or messenger-delivered items, use the following address:

Federal Communications Commission
Office of the Secretary
236 Massachusetts Avenue, NE, Suite 110
Washington, DC 20002 (8:00 a.m. to 7:00 p.m.
ET)

If you are hand-delivering or messenger-delivering your appeal, please note the following:

- Documents enclosed in envelopes will not be accepted. Any envelopes must be **disposed** of before entering the building. Hand deliveries must be held together with rubber bands or fasteners.
 - If a request for confidential treatment is clearly indicated on the first page of the filing, the staff at the filing counter will enclose the filing in a Commission envelope labeled "confidential."
2. Appeals and waiver requests may also be filed **electronically**, either by electronic mail (e-mail) or by facsimile. Items Submitted by electronic mail **will** be considered **filed** on a business day if they are received at the FCC at any time up to **12:00 a.m. (midnight) ET**. Items received **after** that time will be considered received on the next business day. Similarly, facsimile transmissions will be considered **filed** on a **business** day if the complete transmission is received by any time up to **12:00 a.m. (midnight) ET**.
- Items filed by e-mail must be submitted to **CCBSecretary@fcc.gov**. Documents filed by e-mail can be submitted in any widely used word processing format, such as Adobe Portable Document Format (PDF), Word or WordPerfect. The FCC will automatically reply to incoming e-mails to **confirm** receipt.
 - Items filed by facsimile must **be** faxed to **202-418-0187**. The fax transmission should include a cover sheet listing contact name, phone number, and — if available — an e-mail address.

C. Special note on certain appeal deadlines:

The Federal Communications Commission (FCC) released Order FCC 01-376 which amends its procedural rules for filing appeals. The effective date of this Order is January 24, 2002. The Order will remain in effect until further notice.

This Order provides that appeals that were required to be received on or before September 10, 2001 under the previous 30-day filing period requirements are still subject to that 30-day filing period,